

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VERDENE NEWMAN and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Wichita, KS

*Docket No. 00-1816; Submitted on the Record;  
Issued April 13, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's case for further reconsideration of the merits.

On February 10, 1997 appellant, then a 38-year-old distribution clerk, filed a notice of occupational disease alleging that her lower back condition was caused by heavy lifting and being on her feet five hours a day, six days a week. In support of her claim, appellant submitted a personal statement, a job description and a March 6, 1997 report from Dr. Jed D. Holmes, a Board-certified family practitioner, who opined that appellant's ruptured herniated disc was a direct result of her work at the employing establishment. She eventually underwent surgery to correct her condition.

By letter dated June 26, 1997, the Office requested that appellant submit additional factual and medical information. By decision dated August 18, 1997, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish causal relationship.

By letter dated August 5, 1998, appellant requested reconsideration. Modification was denied on August 11, 1998.

By letter dated August 13, 1998, appellant requested reconsideration and submitted additional medical information. Modification was denied on November 12, 1998.

By letter dated November 1, 1999, appellant requested reconsideration but did not submit any new or relevant medical evidence. By decision dated January 20, 2000, the Office denied appellant's request for review.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> Because more than one year has elapsed between the issuance of the Office's November 12, 1998 merit decision and May 3, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the November 12, 1998 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's January 20, 2000 nonmerit decision denying appellant's application for a review of its November 12, 1998 decision.

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> does not give a claimant the right upon request or impose a requirement upon the Office to review a final decision of the Office awarding or denying compensation. Section 8128(a) of the Act, which pertains to review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. The Office through regulations, has placed limitations on the exercise of that discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>3</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>6</sup>

In support of her November 1, 1999 request for reconsideration, appellant submitted a factual response to the Office's November 12, 1998 decision but did not submit any medical evidence. Her claim had been denied because appellant had not submitted the medical evidence necessary to establish a causal relationship between work factors and her medical condition. In a decision dated January 20, 2000, the Office denied appellant's request for review since appellant did not submit any medical evidence based on an accurate history of injury and medical rationale explaining any connection between appellant's condition and factors of her federal employment.

The relevant issue in this case was medical in nature. Appellant's claim was denied because of insufficient rationalized medical evidence to establish a causal relationship between her employment and her back condition. In support of her request for reconsideration, appellant only detailed her reasoning why her claim should be accepted and did not submit any new or

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.606.

<sup>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> 20 C.F.R. § 10.608.

relevant medical evidence. The factual evidence submitted is irrelevant to the medical issue and insufficient to warrant merit review.

Appellant has not established that the Office abused its discretion in its January 20, 2000 decision by denying her request for a review on the merits because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

The January 20, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 13, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member